



US Army Corps  
of Engineers  
Seattle District

# Department of the Army Regional General Permit



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## RGP-8 U.S. Forest Service Fish Passage Program Within the State of Washington

**Effective Date:** October 7, 2005

**Expiration Date:** October 7, 2010

**Permit Number:** RGP-8

**Permit Title:** U.S. Forest Service Fish Passage Program

**Authority:** In accordance with 33 CFR 325.2(e)(2), the U.S. Army Corps of Engineers (Corps) is issuing a regional general permit (RGP) that authorizes certain activities in or affecting waters of the United States, including navigable waters of the United States, upon the recommendation of the Chief of Engineers, pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403) and Section 404 of the Clean Water Act (33 U.S.C. 1344).

**Issuing Office:** U.S. Army Corps of Engineers, Seattle District  
Regulatory Branch, CENWS-OD-RG  
Post Office Box 3755  
Seattle, Washington 98124-3755  
Telephone: (206) 764-3495

**Purpose:** The purpose of this RGP is to authorize culvert replacement or removal projects which enhance fish passage and have minor individual and cumulative adverse impact on the aquatic environment.

To use this RGP, the U.S. Forest Service, Region 6, Pacific Northwest Region (Forest Service), as the permittee, is responsible for ensuring that the authorized activities comply with all applicable provisions of this RGP. Failure to abide by the requirements of this RGP may constitute a violation of the Clean Water Act and/or Rivers and Harbors Act.

This RGP contains provisions intended to protect the environment, endangered species, and cultural resources. Work that will not comply with these provisions is not authorized by this RGP and may require Department of the Army authorization by a standard individual permit. Moreover, compliance with the provisions of this RGP does not itself guarantee that the work would be authorized under this RGP.

**Activities authorized by this RGP:** Work authorized by this RGP is limited to the activities described below. This RGP authorizes the following work in or affecting navigable waters of the United States and discharges of dredged or fill material into waters of the United States.

**Three culvert treatments are covered by this RGP.** They are as follows:

- 1) Culvert/Road fill removal and restoration of stream channels and associated floodplains upstream, within, and downstream of the existing culvert and road fill. This includes the placement of fill, large wood and boulders below or waterward of the ordinary high water mark.
- 2) Culvert replacement with a larger culvert or open-bottom arch culvert. New flow relief culverts may be installed in the existing road prism in developed floodplains.
- 3) Culvert replacement with a bridge and reconstruction of the stream channels and associated floodplains upstream, within, and downstream of the existing culvert and road fill. This includes the placement of fill, large wood and boulders below or waterward of the ordinary high water mark. New flow relief culverts may be installed in the existing road prism in developed floodplains.

**Definitions:**

*Mean higher high water (MHHW)* is the elevation in the shore of tidal waters reached by the plane of the average of the higher of the two daily high tides, generally averaged over a period of 19 years. This elevation has been established at set tide gauges throughout Washington State. The MHHW for these tide gauges may be obtained by checking the following website  
<http://www.nws.usace.army.mil/hh/tides/tides.htm> .

*Mean high water (MHW)* The elevation on the shore of tidal waters (ocean waters, bays, estuaries, and certain rivers) “reached by the plane of the mean (average) high water. Where precise location of the actual line becomes necessary, it must be established by survey with reference to the available tidal datum, preferably averaged over a period of 18.6 years.” There are set tide gauges throughout Washington State. The MHW for these tide gauges may be obtained by checking the following website:  
<http://www.nws.usace.army.mil/hh/tides/tides.htm>

*Ordinary high water mark.* The line on the shore of non-tidal streams and lakes “established by fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank; shelving; changes in the character of the soil; destruction of terrestrial vegetation; the presence of litter and debris; or other appropriate means that consider the characteristics of the surrounding areas.” It is the line of jurisdiction in freshwaters for the Corps of Engineers regulatory program. For tidally influenced waterbodies, OHW correlates to the line of Mean Higher High Water (MHHW).

**Location of Authorized Activities:** This RGP is applicable in all waters of the United States, including navigable waters of the United States, located within lands administered by National Forest units within the State of Washington. National Forests located solely in Washington include the Colville, Gifford Pinchot, Mt. Baker Snoqualmie, Okanogan-Wenatchee, and the Olympic National Forest. National Forest system lands that extend into both Oregon and Washington include Umatilla National Forest and the Columbia River Gorge National Scenic Area. Within the aforementioned National Forest units, the authorized activities will be restricted to road crossings at streams (404 only and/or navigable waters). Road crossing project on Non-federal lands can be authorized when such project improve fish passage into National Forest lands.

**Annual Reporting Requirements:**

The Forest Service will submit an annual report to U.S. Army Corps of Engineers, Seattle District, Regulatory Branch (Corps), the National Marine Fisheries Service (NMFS), the U.S. Fish and Wildlife Service (FWS) and the Washington Department of Ecology (Ecology) summarizing the completed fish passage culvert projects for that year. This report is due no later than January 30 of each year.

**Reporting:** Reports must include the following elements:

- Forest Service Project Identification #,
- Project Name,
- Location,
- Date of construction (start and completion dates) ,
- Identification as either a culvert removal or replacement project,

Width and slope of impassable culvert  
 Fish species/Evolutionarily Significant Unit (ESU) (and life history stages) above and below the impassable culvert,  
 Bankfull width (from the ordinary high water mark) and slope of stream channel,  
 Designation of channel substrate,  
 New structure type,  
 Width and slope of new structure,  
 Miles of stream opened to fish passage,  
 Number of injuries/mortalities to Endangered Species Act (ESA) listed species as a result of construction

**Annual Review:** In addition to the annual reports, the Forest Service will coordinate and convene an annual review meeting with the Corps and Ecology to discuss the annual monitoring report, conduct site visits, and collectively determine if RGP objectives are being met.

**Water Quality Certification:** On May 31, 2005, Ecology issued the Section 401 Water Quality Certification (WQC) for RGP-8. The FS must comply with the conditions specified in the WQC as special conditions of this RGP.

**Coastal Zone Management Consistency:** Section 307(c) of the Coastal Zone Management Act of 1972 (CZMA), as amended (16 U.S.C. 1456 c)), requires federal agencies conducting activities, including development projects, affecting a state's coastal zone, to comply to the maximum extent practicable with an approved state coastal zone management program. The Forest Service must comply with requirements of the State of CZMA for the activities authorized by this RGP.

**Endangered Species:** The Endangered Species Act of 1973 (ESA), as amended, requires all Federal agencies to consult with the National Marine Fisheries Service (NMFS) and/or the U.S. Fish and Wildlife Service (USFWS), pursuant to Section 7 of the ESA, on any action, or proposed action, permitted, funded, or undertaken by the agency that may affect a species listed as threatened or endangered under the ESA, or its designated critical habitat. The U.S. Forest Service has determined that activities that would be authorized by this RGP would affect federally listed species and, therefore, have completed consultation with the NMFS and USFWS. NMFS (NMFS reference number 2003/00670) issued a Biological Opinion (BO) on September 2, 2003, and USFWS (USFWS reference numbers 1-3-03-PF-1243 WA and 1-7-03-F-0379 WA) issued Biological Opinion (BO) on January 21, 2004, for the proposed activities covered under this RGP. The U.S. Forest Service must implement the Terms and Conditions stated in the both biological opinions.

**Essential Fish Habitat:** The Magnuson-Stevens Fishery Conservation and Management Act (MSA), as amended by the Sustainable Fisheries Act of 1996, requires all Federal agencies to consult with the NMFS on all actions, or proposed actions, permitted, funded, or undertaken by the agency that may adversely affect Essential Fish Habitat (EFH). The Forest Service has determined that activities authorized by this RGP may adversely affect EFH for federally managed fisheries in Washington waters. In this consultation, the NMFS concluded that the proposed activities authorized by this RGP may adversely affect designated EFH for Pacific salmon. The NMFS has included conservation recommendations as terms and conditions of the BO, issued by NMFS on September 3, 2003, to avoid, minimize, or otherwise offset affects to designated EFH produced by the activities authorized by this RGP. These Terms and Conditions are incorporated into the RGP by reference.

**Permit Conditions:** Department of the Army authorization under this RGP is subject to the following special and general conditions:

### SPECIAL CONDITIONS

(1). Work Windows. Work that disturbs the substrate, bank, or shore of a water of the United States that contains fish life shall be conducted only during the work period for that waterbody as indicated in the most recent Washington Department Fish and Wildlife (WDFW) Allowable Work Periods for Hydraulic Projects in Freshwater for the project area. Other timing will be allowed on site-specific basis if the Forest Service fish biologist and the WDFW Area Habitat Biologist agree that implementing the activity outside the normal period would be unlikely to cause negative impacts to fish. Any agreements to modify the work period for specific projects or specific sites will be documented by WDFW. Upon request from the Corps, the Forest Service must provide a list of specific projects or specific sites where work periods were modified through agreement between Forest Service and WDFW.

Those portions of the project work that occur outside or above (waterward of) the ordinary high water channel (above the Corps jurisdictional line) are not subject to the work periods described above. Examples of such work include the replacement of bridge decking, construction of bridge superstructure after footings are in place, and the placement of fill over a culvert following culvert placement.

(2). Compliance with Terms and Conditions. Projects authorized by this RGP shall comply with all terms and conditions herein and any conditions added by the National Marine Fisheries and the U.S. Fish and Wildlife Services as a result of their Biological Opinions (BOs), and the Washington State Department of Ecology as a result of a water quality certification. Failure to abide by these terms and conditions invalidates this authorization and may result in a violation of Federal law, which may require that the permittee restore the site or take other remedial action. Activities requiring Department of the Army authorization that are not specifically authorized by this RGP are prohibited unless authorized by another Department of the Army permit.

(3). Endangered Species. This RGP does not authorize you to take a threatened or endangered species, in particular the Lower Columbia River chinook, Upper Columbia River spring-run chinook, Puget Sound chinook, Snake River fall-run chinook, Snake River spring/summer-run chinook, Columbia River chum, Hood Canal summer-run chum, Lower Columbia River steelhead, Middle Columbia River steelhead, Upper Columbia River steelhead, Snake River Basin steelhead, Columbia River bull trout, Coastal/Puget Sound bull trout, gray wolf, woodland caribou, Wenatchee Mountains checker-mallow, marsh sandwort, showy stickseed, grizzly bear, Canada lynx, bald eagle, Warner sucker, Spalding's catchfly, Ute's ladies'-tresses, water howellia, Kincaid's sulphur lupine, bald eagle, marbled murrelet, northern spotted owl, and or adversely modify designated critical habitat. In order to legally take a listed species, you must have a separate authorization under the Endangered Species Act (ESA) (e.g., an ESA Section 10 permits, or ESA Section 7 consultation Biological Opinion with non-discretionary "incidental take" provisions with which you must comply). The BO(s) prepared by the National Marine Fisheries Service (NMFS) dated September 3, 2003, and the U.S. Fish and Wildlife Service (USFWS) dated January 21, 2004, contain mandatory terms and conditions to implement the reasonable and prudent measures that are associated with the specified "incidental take" in the BO(s) (USFWS reference numbers 1-3-03-PF-1243 WA and 1-7-03-F-0379 WA). Your authorization under this Corps permit is conditional upon your compliance with all of the mandatory terms and conditions associated with incidental take of the BO(s). These terms and conditions are incorporated by reference in this permit. Failure to comply with the commitments made in this document constitutes non-compliance with the ESA and this RGP. The USFWS/NMFS is the appropriate authority to determine compliance with ESA.

The BO(s) issued to the permittee may be modified, renewed, or updated to incorporate changes in listed species, critical habitat or Terms and Conditions, as deemed necessary by the issuing agency, USFWS or NMFS. The revised and/or renewed BO(s) will remain eligible under the RGP until the RGP expiration date. Copies of the revised and/or renewed BO(s) must be sent to the U.S. Army Corps of Engineers, Regulatory Branch, within 10 days of the date of the revised BO.

The permittee must re-initiate consultation with the appropriate agency, USFWS or NMFS, if critical habitat is designated for a species and the BO(s) must be revised to include the necessary changes prior to construction of a project located in designated critical habitat.

(4). Essential Fish Habitat. The U.S. Forest Service, Pacific Northwest Region 6 has completed EFH consultation pursuant to section 305(b) of the MSA and implementing regulation at 50 CFR Part 600. In this consultation, NMFS concluded that the proposed actions may adversely affect designated EFH for Pacific salmon. NMFS has included conservation recommendations in the Biological Opinion (NMFS Reference Number 2003/00670), dated September 2, 2003 to avoid, minimize or otherwise offset effect to EFH produced by activities authorized by this RGP. Your authorization under this Corps permit is conditional upon your compliance with all of the conservation recommendations in the NMFS Biological Opinion. These conservation measures are incorporated by reference in this permit. Failure to comply with the commitments made in this document constitutes non-compliance with the MSA and this RGP. The NMFS is the appropriate authority to determine compliance with MSA.

(5). Historic Properties. U.S. Forest Service, Pacific Northwest Region 6, is the federal lead for compliance with National Historic Preservation Act. Activities authorized by this RGP that may affect historic properties listed or eligible for listing, in the National Register of Historic Places (NRHP) under the provisions of 33 CFR 325, Appendix C, must be satisfied prior to construction. Historic properties include prehistoric and historic archeological sites, and areas or structures of cultural interest. The Forest Service must notify the Corps if the proposed activity may affect an historic property that is listed, eligible for listing, or may be eligible for listing in the NRHP, and shall not begin the activity until the requirements of the National Historic Preservation Act have been satisfied by providing documentation, including a concurrence letter from State Historic Preservation Office (SHPO) and/or from an affected Indian Tribe(s) to the Corps. If a previously unknown historic property is encountered during work authorized by this RGP, the permittee shall immediately cease all ground activities in the immediate area, notify the SHPO, any affected Indian Tribe(s) and Corps within 1 business day of discovery. The permittee shall perform any work required by SHPO, tribes or the Corps in accordance with Section 106 of the National Historic Preservation Act and Corps regulations and avoid any further impact to the property until the requirements of 33 CFR Part 325, Appendix C, have been satisfied.

(6). Wild and Scenic Rivers. No activity may occur in a component of the National Wild and Scenic River System or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status unless the appropriate Federal agency (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, USFWS), that has direct management responsibility for such rivers has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status. The U.S. Forest Service, Pacific Northwest Region 6 is one of the responsible Federal agencies for National Wild and Scenic River System. The permittee will provide documentation to the Corps in the annual report that the activities authorized by the RGP did not adversely affect any Wild and Scenic River designation or study status. The permittee must provide documentation from the responsible federal agency (National Park Service, Bureau of Land Management or USFWS) that any proposed

activity will not adversely affect the Wild and Scenic River designation or study status for any project within the National Wild and Scenic River System for which the Forest Service is not the responsible agency.

(7). Best Management Practices (BMPs). The following BMPs must be implemented:

- Installation of sediment/erosion control devices including sediment fencing, hay bales, etc. prior to construction.
- Implementation of Pollution and Erosion Control Plan (PECP) that will minimize use of heavy equipment, maintain clean equipment, and limit ground clearing activities close to streams.
- Implementation of spill prevention and containment plan (SPCP) that will minimize spillage of fuel/oil leakage from equipment.
- Isolation of in-stream work areas by installation of a stream diversion structure and dewatering of work area.
- Turbidity monitoring and reporting during active in-water work.
- Revegetation of all disturbed areas with native plants.

### **GENERAL CONDITIONS**

1. Reliance on Permittee's Information. In verifying a permittee's authorization under this RGP, the Department of the Army has relied, in part, on the information provided by the permittee. If this information proves to be false, incomplete, or inaccurate, the permittee's authorization may be modified, suspended, or revoked, in whole or in part.

2. Contractor's Copy of Permit. The permittee shall provide complete copies of this permit to the contractor. Best Management Practices (BMPs) to ensure that the Terms and Conditions of the NMFS and FWS biological opinions for the authorized project will be met, shall be incorporated into the contract provisions for each project. Copies of this permit and Forest Service's contract (including the BMPs) must be kept at the project site during construction and be available for inspection at the project site.

3. Work in the Dry. Work that disturbs the substrate, bank, or shore of a water of the United States shall occur in the dry whenever practicable.

4. Operation of Equipment. Equipment shall be operated from the top of the bank, dry gravel bar, work platform, or similar out-of-water location whenever possible. Equipment shall be operated in a manner that minimizes the suspension of particulates. All equipment used in or around waters shall be clean and inspected daily prior to use to ensure that the equipment has no fluid leaks. Should a leak develop during use, the leaking equipment shall be removed from the site immediately and not used again until it has been adequately repaired. No equipment may be stored or fueled so close to a surface water that the activity could adversely affect the waterbody.

5. Disturbance of Vegetation. Disturbance of bank vegetation shall be limited to the minimum amount necessary to accomplish the project. Disturbed bank vegetation shall be replaced with native, locally adapted species appropriate for the site whenever practicable.

6. Isolation of Work Area. In-water work areas shall be isolated from the surrounding waterbody by a properly installed silt screen or a similar sediment containment device whenever practicable. The permittee shall remove the silt screen or other temporary sediment containment devices as soon as they are no longer necessary to protect the surrounding waterbody.

7. Permanent Discharges. The discharge of dredged or fill material into waters of the United States to dispose of the material or to create dryland is not authorized.

8. Access for Inspection. The permittee shall allow the District Engineer or his authorized representative to inspect the project whenever deemed necessary by the Corps, to ensure that the activity is in compliance with the terms and conditions prescribed herein.

9. Limits of Authorization. This permit does *not*:

a. Obviate the requirement to obtain all other Federal, State, or local authorizations required by law for the activity authorized herein, including any authorization required from Congress.

b. Convey any property rights, either in real estate or material, or any exclusive privileges.

c. Authorize any injury to property, invasion of rights, or any infringement of Federal, State, or local laws or regulations.

d. Authorize the interference with any existing or proposed Federal project.

10. Limits of Federal Liability. This permit is not an approval of the design features of any authorized project or an implication that such project is adequate for the intended purpose; a Department of the Army permit merely expresses the consent of the Federal Government to conduct the proposed work insofar as public rights are concerned. In issuing this RGP, the Federal Government does not assume any liability for the following:

a. Design or construction deficiencies associated with the authorized work.

b. Damages to the permitted project or uses thereof as a result of other permitted activities or from natural causes, such as flooding.

c. Damages to persons, property, or to other permitted or unauthorized activities or structures caused by the activity authorized by this permit.

d. Damages associated with any future modification, suspension, or revocation of this permit.

e. The removal, relocation, or alteration of any structure or work in navigable waters of the United States ordered by the Secretary of the Army or his authorized representative.

f. Damage to the permitted project or uses thereof as a result of current or future activities undertaken by, or on behalf of, the United States in the public interest.

11. Tribal Rights. No activity may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

12. Corps Coordination. The permittee shall coordinate with the appropriate office of the Corps prior to commencing any construction activity in a federally maintained channel and/or waterway. (Section 10)

13. Obstruction of Navigation. The permittee understand and agree that, if future operations by the United States require the removal, relocation, or other alteration of the work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work unreasonably obstructs the full and free use of navigable waters of the United States, the permittee shall, upon due notice from the Corps, remove, relocate, or alter the obstructions caused thereby, without expense to the United States. If the permittee fails to comply with the direction of the Corps, the District

Engineer may restore the navigable capacity of the waterway, by contract or otherwise, and recover the cost thereof from the permittee. (Section 10)

14. Stability. The permittee shall design projects to be stable against the forces of flowing water, wave action, and the wake of passing vessels.

15. Maintenance. The permittee shall properly maintain all authorized structures and fills, including maintenance necessary to ensure public safety.

16. Marking Structures. The permittee shall install and maintain any lights, signals, or other appropriate markers necessary to clearly designate the location of structures or work that might pose a hazard to public safety. Permittees shall abide by U.S. Coast Guard requirements concerning the marking of structures and work in navigable waters of the United States. (Section 10)

17. Water Quality Standards. All activities authorized herein that involve a discharge of dredged or fill material into waters of the United States shall, at all times, remain consistent with all applicable water quality standards, effluent limitations and standards of performance, prohibitions, pretreatment standards, and management practices established pursuant to the Clean Water Act (P.L. 92-500; 86 Stat. 816) or pursuant to applicable State and local law. (Section 404)

18. Minimization of Environmental Impact. The permittee shall make every reasonable effort to conduct the authorized activities in a manner that minimizes the adverse impact of the work on water quality, fish and wildlife, and the natural environment, including adverse impacts to migratory waterfowl breeding areas, spawning areas, shellfish beds, and aquatic resource buffer zones.

19. Soil Erosion and Sediment Controls. The permittee shall use and maintain appropriate erosion and sediment controls in effective operating condition and permanently stabilize all exposed soil and other fills, including any work below the ordinary high water mark or high tide line, at the earliest practicable date using native vegetation to the maximum extent practicable. The permittee shall remove all installed controls as soon as they are no longer needed to control erosion or sediment.

20. Equipment. The permittee shall place heavy equipment working in wetlands on mats, or take other appropriate measures to minimize soil disturbance.

21. Aquatic Life Movements. The permittee shall not substantially disrupt the necessary life-cycle movement of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the primary purpose of the activity is to temporarily impound water.

22. Management of Water Flows. To the maximum extent practicable, the activity must be designed to maintain downstream flow conditions. Furthermore, the activity shall not permanently restrict or impede the passage of normal or expected high flows unless the primary purpose of the fill is to temporarily impound water. The permittee should limit the work conducted in waters of the United States to low- or no-flow periods.

23. Water Supply Intakes. The permittee shall ensure that activities authorized by this RGP have no more than a minimal adverse impact on public water supply intakes.

24. Practicable Alternatives. Activities authorized by this RGP shall be designed and constructed to avoid and minimize adverse impacts to waters of the United States to the extent practicable through the use of practicable alternatives. Alternatives that shall be considered include those that minimize the number and extent of discharges of dredged or fill material into waters of the United States.



25. Suitable Material. Any material or structure placed in waters of the United States, whether temporary or permanent, shall be free of toxic pollutants in toxic amounts. (Section 404)

26. Removal of Temporary Fills. Temporary fills must be removed in their entirety and the affected area returned to pre-construction contours. (Section 404)

27. Disposal of Excess Material. All construction debris and any other material not authorized by the Corps for permanent placement into waters of the United States shall be disposed of in an upland location in a manner that precludes it from entering waters of the United States. (Section 404)

**Modification, suspension, or revocation of the RGP:** This RGP may be modified, suspended, or revoked in whole or in part if the Secretary of the Army or his authorized representative determines that the individual or cumulative impacts of work that would be authorized using this procedure are contrary to the public interest. Any such modification, suspension, or revocation shall become effective 30 days after the issuance of a public notice announcing such action. The final decision whether to modify, suspend, or revoke this permit, in whole or in part, shall be made pursuant to procedures prescribed by the Chief of Engineers. Following such revocation, any future activities heretofore authorized by this RGP will require alternate Department of the Army authorization.

The authorization of an individual project under this RGP may also be summarily modified, suspended, or revoked, in whole or in part, if the permittee either fails to abide by the terms and conditions of this permit or provides information that proves to be false, incomplete, or inaccurate, or, upon a finding by the District Engineer, that such action would be in the public interest. If a permittee's authorization is revoked, the permittee shall, upon notice of such revocation, without expense to the United States and in such time and manner as the Secretary of the Army or his authorized representative may direct, restore the waterway to its former condition. If the permittee fails to comply with the direction of the Secretary of the Army or his authorized representative, the Secretary or his designee may restore the waterway to its former condition, by contract or otherwise, and recover the cost thereof from the permittee.

**Expiration of the RGP:** This permit shall become effective on the date of the signature of the District Engineer or his authorized representative and will automatically expire 5 years from that date unless the permit is modified, revoked, or extended prior to that date. Activities that have commenced (e.g., are under construction) or are under contract to commence in reliance upon this permit will remain authorized provided that the activity is completed within 1 year of the date of this permit's expiration, modification, or revocation, unless discretionary authority has been exercised on a case-by-case basis to modify, suspend, or revoke the authorization.

BY AUTHORITY OF THE SECRETARY OF THE ARMY:

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Date

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DEBRA M. LEWIS  
Colonel, Corps of Engineers  
District Engineer